

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MICHAEL R. SNELL §
v. § CIVIL ACTION NO. 5:11cv126
COMMUNITY EDUCATION CENTERS §
CORRECTIONAL AND MEDICAL STAFF,
ET AL.

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING MOTION FOR DEFAULT JUDGMENT

The Plaintiff Michael Snell, an inmate currently confined in the United States Penitentiary in Leavenworth, Kansas, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The lawsuit was originally filed in the Western District of Arkansas, but a portion of it, referring to defendants in the State of Texas, has been transferred to the Eastern District of Texas. Prior to the transfer, on December 17, 2010, Snell filed a motion for default judgment against Bowie County Sheriff James Prince, and Dr. Nash, the two individual defendants who have been transferred to the Eastern District of Texas. The docket shows that Nash and Prince both filed motions to dismiss for improper venue or, in the alternative, to transfer venue. These motions were filed under Rule 12(b)(3) of the Federal Rules of Civil Procedure. Rule 12 provides that a motion raising improper venue must be made before an answer is filed.

The motions for transfer of venue were granted on June 22, 2011, and the claims against these defendants were transferred to the Eastern District of Texas. Following the transfer, an answer was filed on June 27, 2011. On July 14, 2011, the Court entered a scheduling order.

After review of the pleadings, the Magistrate Judge issued a Report on July 25, 2011, recommending that the motion for default judgment be denied. Snell asked for and received an extension of time in which to file objections to this Report, but this extension has expired and no objections have been filed. Accordingly, Snell is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 55) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for default judgment (docket no. 24) be and hereby is DENIED.

SIGNED this 19th day of September, 2011.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE